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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/881,523

06/14/2001

Christopher Allin Kitze

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EXAMINER

DASS, HARISH T

ART UNIT

PAPER NUMBER

3693

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/881,523

Applicant(s)

KITZE, CHRISTOPHER ALLIN

Examiner

Harish T. Dass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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DETAILED ACTION

In view of the Appeal Brief filed on April 11, 2006, PROSECUTION IS HEREBY REOPENED.


To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

James Kramer.

Handwritten signature of James A. Kramer and the date 2/15/07.

Status of claims:

Claims 1-46 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

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person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 10-12, 19, 26, 33 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (hereinafter Johnson – US 6,167,124) in view of DeBruine (US 7,043,644).

Re. Claims 1 and 45-46, Johnson discloses (a) when a digital file (files – voice, video, etc) is to be transferred over the network from a sending node to a receiving node, allowing other nodes to submit bids to transport the file over the network for a particular price [col. 2 line 45 to col. 3 line 26; col. 3 lines 46-65; col. 20 lines 30-44; col. 16 lines 1-7]; and

(b) allowing the node with a lowest bid to transport to file to the receiving node, thereby optimizing network traffic based on economics [col. 1 line 25 to col. 2 line 44; col. 18 line 30 to col. 19 line 4 – see manager keeps track of each carrier's charge ... "least cost routing"]. Johnson does not explicitly disclose peer-to-peer network. However, DeBruine discloses peer-to-peer network (P2P) [Abstract; col. 1 lines 52-64 (see Napster); col. 3 lines 7-17] to provide a secure e-delivery network for large files, both commercial and private, where the network enables secure and reliable peer-to-peer file sharing between client nodes. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Johnson and include peer-to-peer network, as disclosed by DeBruine, to allow the bidder to submit/transmit bids for delivery of large electronic files using an reliable and efficient network such as peer-to-peer network.

Re. Claim 2, Johnson discloses paying a user of the transporting node the particular price [C20 L4-L29].

Re. Claim 3, Johnson discloses including the step of billing a user of the sending node [C22 L25-65].

Re. Claim 10, peer-to-peer network claim 10 is substantially similar to claim 1 and therefore rejected with same rational as claim 1.

Re. Claim 11, peer-to-peer network claim 11 is substantially similar to claim 2 and therefore rejected with same rational as claim 2.

Re. Claim 12, peer-to-peer network claim 12 is substantially similar to claim 3 and therefore rejected with same rational as claim 3.

Re. Claim 19, Johnson discloses (b) when a digital file is to be transferred over the network from a sending node to a receiving node, allowing other nodes to submit bids to transport the file over the network for a particular price [col. 2 line 45 to col. 3 line 26; col. 3 lines 46-65; col. 20 lines 30-44];

(c) allowing the node with a lowest bid to transport to file to the receiving node [col. 1 line 25 to col. 2 line 44; col. 18 line 30 to col. 19 line 4]; and

(d) billing a user account of the sending node, and paying a user of the transporting node the particular price [col. 16 lines 1-36; col. 20 lines 30-43; col. 22 line 25-65; - In response to applicant argument; a). disclosure of Johnson is not limited to 800 number and does not exclude bidding for other types of communication capacity including P2P (see col. 16); b). It is well known that the originator of the phone calls (communication user) pays the bill (such as phone bill, use of modem for downloads of files, or telex charges) and it is true for Internet users who pay to service provider. It is obvious that the user (originator) of the network service has to pay the usage charges and the Johnson's 800 customer has selected this type of payment model. Disclosure of Johnson is not limited to 800 number service see col. 16. For example, WATS lines are known where AT&T, MCI, etc provide the WATS services. Since disclosure of Johnson is not limited to 800 customer and does not exclude bidding for WATS lines (WATS, where the originator pays for the usage.) The same is true that disclosure of Johnson does not exclude bidding for P2P where the user pays for usage.],

thereby optimizing network traffic based on economics (efficient, switch network, least costly) [col. 2 lines 25-38; col. 15 lines 48-56; col. 22 lines 25-65 – see manager keeps track of each carrier's charge ... "least cost routing"]. Johnson does not explicitly disclose (a) providing a peer-to-peer network that includes at least one server node and multiple client nodes. However, DeBruine discloses peer-to-peer network [Abstract; col. 3 lines 7-17] to provides a secure e-delivery network for large files, both commercial and private, where the network enables secure and reliable peer-to-peer file sharing between client nodes. It would have been obvious at the time the invention was

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made to a person having ordinary skill in the art to modify the disclosure of Johnson and include peer-to-peer network, as disclosed by DeBruine, to allow the bidder to submit/transmit bids for delivery of large electronic files using an reliable and efficient network such as peer-to-peer network.

Re. Claim 26, peer-to-peer network claim 26 is substantially similar to claim 19 and therefore rejected with same rational as claim 19.

Re. Claim 33, Johnson discloses (c) in response to the user publishing one or more files, prompting the user to select a quality of service for file delivery [col. 3 lines 47-55 – see distribute]; (g) comparing the received bids and choosing the node that submitted a lowest price to transport the file [col. 18 lines 30-67; col. 20 lines 4-29]; (f) accepting bids to transport the file from other nodes [Abstract; col. 17 lines 41-56 (bid confirmation) means accepted] and (h) paying a user of the transporting node (inherent in John's), thereby allowing the user of the transporting node to generate extra revenue and optimizing network traffic based on economics [col. 1 line 25 to col. 2 line 44; col. 18 line 30 to col. 19 line 4; claims 18-19].

Johnson does not explicitly disclose (a) allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer;

(b) receiving registration information entered by the user, and generating a user account;

(d) calculating a total fee to charge the user for delivery of the file and automatically billing the user's account; and

(e) offering delivery of the file up for bidding from a central location.

However, automation of billing system for communication such as phones or telex are well-known due to the complexity and volumes of calls, where manpower cannot do the job therefore calls are automatically tracked by computers and customers are bill for their calls, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Johnson and automat P2P usage, since the usage time of resources are event much smaller than regular calls, to keep track of every customers usage efficiently and correctly.

DeBruine discloses peer-to-peer network and (a) allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer; (b) receiving registration information entered by the user, and generating a user account [col. 4 lines 1-31]; and (d) calculating a total fee (inherent in DeBruine) to charge the user for delivery of the file and automatically billing the user's account (inherent in DeBruine) [Figures 2A-2B; col. 3 lines 7-17 (fee or total fee); col. 1 (charge content); col. 4 lines 1-31 (billing information and account)], and (e) offering delivery of the file up for bidding from a central location [col. 3 lines 38-64; col. 4 lines 50-55]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Johnson and include allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer, receiving registration information

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entered by the user, and generating a user account, calculating a total fee to charge the user for delivery of the file and automatically billing the user's account, and peer-to-peer network, as disclosed by DeBruine, to provide P2P services to registered user with account and allow the user to efficiently transmit and download contents and large files for fee.

Claims 4-9, 13-18, 20-25, 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson and DeBruine, as applied to claims 1, 10, 19 and 26 above, and further in view of Odlyzko (US 6295,294).

Re. Claims 4-9, Johnson discloses submitting bids for different types of communication system, requiring the submitted bids to include price and a quality of service (service type) [col. 16 lines 1-13; col. 19 line 45 to col. 20 line 43]. DeBruine further discloses sending the large file using peer-to-peer network [col. 3 lines 7-17] to efficiently transmit large files over P2P network. Johnson or DeBruine does not explicitly disclose allowing the sender to specify a particular quality of service for delivery of the file, the quality of service including immediate delivery and scheduled delivery, setting the price to transport the file based on the quality of service specified, if the specified quality of service is immediate delivery, if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when receiving node comes online, and if the specified quality of service is scheduled delivery, then queuing file

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transmission until a scheduled time. However, Odlyzko (US 6295,294) discloses these features [see entire document particularly, Abstract; col. 5 L16-L56; col. 6 L7-L35; col. 7 L42-L58; col. 9 L11-L43] to allow the user to select a service (channel) from plurality of services (channels). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson, DeBruine and Odlyzko to allowing a user to specify different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files (such as news downloads).

Re. Claims 13-18, peer-to-peer network claims 13-18 are substantially similar to claim 4-9 and therefore, they are rejected with same rational as claims 4-9.

Re. Claims 20-25, Johnson discloses submitting bids for different types of communication system, requiring the submitted bids to include price and a quality of service (service type) [col. 16 L1-L13; col. 19 L45 to col. 20 L43]. Johnson or DeBruine does not explicitly disclose allowing the sender to specify a particular quality of service for delivery of the file, the quality of service including immediate delivery and scheduled delivery, including step of setting the price to transport the file based on the quality of service specified, if the specified quality of service is immediate delivery, then sending the file peer-to-peer, if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when receiving node comes online, and if

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the specified quality of service is scheduled delivery, then queuing file transmission until a scheduled time. However, Odlyzko (US 6295,294) discloses these features [see entire document particularly, Abstract; col. 5 L16-L56; col. 6 L7-L35; col. 7 L42-L58; col. 9 L11-L43] to allow the user to select a service (channel) from plurality of services (channels). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson, DeBruine and Odlyzko to allowing a user to specify different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files (such as news downloads).

Re. Claims 27-32, peer-to-peer network claims 27-32 are substantially similar to claim 20-25 and therefore, they are rejected with same rational as claims 20-25.

Claims 34-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, and DeBruine, as applied to claim 33 above, and further in view of Barzilai et al (hereinafter Barzilai – US 6,012,045).

Re. Claims 34-35, Barzilai discloses generating a digital certificate for the user that includes a public key and a private key (see encryption), storing the user's account information and the user's public key and private key in at least one database accessible by a server node [C6 L50-L57; C7 L60 to C8 L33 – see encryption]. It would

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have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosures of Johnson, and DeBruine and include generating a digital certificate for the user that includes a public key and a private key, storing the user's account information and the user's public key and private key in at least one database accessible by a server node, as disclosed by Barzilai, for allowing the sender for transmitting digital files in secure manor for intended destination and not allow the content to be viewed by unauthorized user.

Re. Claim 36, Johnson discloses publishing the file by making the file publicly available on the network for searching by other client nodes by adding the file to a searchable index of shared files on the server node [C18 L30-L67; C20 L4-L29].

Re. Claims 37-38, Johnson does not explicitly disclose publishing the file for direct file transfer and showing the user a fee charged for each level of quality of service.

However, file transfer protocol is well known to transfer files from one computer to another directly either in binary format of files format and similarly showing the user a fee charged for each level of quality of service is well known to allow the user to check his bill statement and charge rate (For example, customer checks his/her phone bill for different charges, Internet, cable, long distance, local, operator assistance, etc).

Re. Claim 39, Barzilai further discloses digitally signing the file and storing the digital signature on the server node for file authentication [C7 L60 to C8 L33]. It would have

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been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosures of **Johnson, and DeBruine and include** digitally signing the file and storing the digital signature on the server node for file authentication, as disclosed by Barzilai, for allowing the sender for transmitting digital files in secure manor for intended user who is enable to open the content and is able verify the authenticity of the sender of transferred file.

Re. Claim 40, Johnson, DeBruine or Barzilai does not disclose uploading a copy of the file to the server node so that when the recipient node is off-line at the time the file is to be delivered, the server node can deliver the file when recipient node comes back on-line. However, this is well known to one skill in the art to keep a copy of the file in server for later delivery (for example, an email is delivered when the recipient logs in to the email server and reads his/her email). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosures of Johnson, DeBruine and Barzilai and include the above features for maximum efficiency and cost saving.

Re. Claim 41-44, Barizilia further discloses member account activity and webpage [Figures 2, 7; C5 L7-L40]. Johnson, DeBruine or Barzilai does not disclose providing the offer as an entry on a web page that includes a name and size of the file, a chosen quality of service, a location of the recipient, and a bid submission time limit, identifying in the bid the bidding node, and a predetermined price and a quality of service for

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delivering the file, choosing the bid that has the lowest price and that matches the quality of service in the offer, and providing the node that submitted the chosen bid with information necessary to transport the file across the network. However, these features are well known to electronic auction site where the site provides all the information on auction web page (For example, eBay, shows the bids, price, item auctioned, and customer account, etc.) It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosures of Johnson, DeBruine and Barzilai and include the above features to allow the user to use the online auction facilities webpage and participate in bidding process.

Response to Arguments

2. Applicant's arguments filed 11/02/06 have been fully considered but they are not persuasive. Applicant's arguments with respect to pending claims have been considered and are responded in response to the claims accordingly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James A. Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harish T Dass
Examiner
Art Unit 3693

Harish T Dass

2/12/07